

Proposed Amendment of N.D.N.Y.L.R. 83.4(g)

(g)(1) In addition to any other sanctions imposed in any particular case under these Rules, any person admitted to practice in this Court may be prohibited from practicing in this Court or otherwise disciplined for cause.

(2) Complaints alleging any cause for discipline shall be directed to the Chief Judge and must be in writing. If the conduct alleged in the complaint is deemed sanctionable by the Chief Judge, the Chief Judge shall appoint a panel attorney to investigate and, if necessary, support the complaint. At the same time, the Chief Judge shall refer the matter to a magistrate judge for all pre-disposition proceedings.

(3) The Chief Judge shall appoint a panel of attorneys who are members of the bar of this Court to investigate complaints and, if the complaint is supported by the evidence, to prepare statements of charges and to support such charges at any hearing. In making appointments to the panel, the Chief Judge may solicit recommendations from the Federal Court Bar Association and other bar associations and groups. Attorneys shall be appointed to the panel for terms not to exceed four years without limitation as to the number of terms an attorney may serve. An attorney from this panel who is appointed to investigate and support a complaint in accordance with subsection (3) below ("panel attorney") may be reimbursed for expenses incurred in performing such duties from the Pro Bono Fund to the extent and in the manner provided in N.D.N.Y.L.R. 83.3(g).

(4) If the panel attorney determines after investigation that the evidence fails to establish probable cause to believe that any violation of the Code of Professional Responsibilities has occurred, the panel attorney shall submit a report of such findings and conclusions to the Chief Judge for the consideration of the active district court judges.

(5) If the panel attorney determines after investigation that the evidence establishes probable cause to believe that one or more violations of the Code of Professional Responsibilities has occurred, the panel attorney shall prepare a statement of charges alleging the grounds for discipline. The Clerk of the Court shall cause the Statement of Charges to be served upon the attorney concerned ("responding attorney") by certified mail, return receipt requested, directed to the address of the attorney as shown on the rolls of this Court and, if different, to the last known address of the attorney as shown in any other source together with a direction from the Clerk that the responding attorney shall show cause in writing within thirty days why discipline should not be imposed.

(6) If the responding attorney fails to respond to the statement of charges, the charges shall be deemed admitted. If the responding attorney denies any charge, the assigned magistrate judge shall schedule a prompt evidentiary hearing. The magistrate judge may grant such pre-hearing discovery as deemed necessary, shall hear witnesses called by the panel attorney supporting the charges and by the responding attorney, and may consider such other evidence included in the record of the hearing as deemed relevant and material. A disciplinary charge may not be found proven unless supported by clear and convincing evidence. The magistrate judge

shall report his or her findings and recommendations in writing to the Chief Judge and shall serve them upon the responding attorney and the panel attorney. The responding attorney and the panel attorney may file objections to the magistrate judge's report and recommendations within twenty days of the date thereof.

(7) An attorney may not be found guilty of a disciplinary charge except upon a majority vote of the active district judges that such charge has been proven by clear and convincing evidence. Any discipline imposed shall also be determined by a majority vote of the active district judges except that in the event of a tie vote, the Chief Judge shall cast a tie-breaking vote.

(8) Unless other wise ordered by the Court, all documents, records, and proceedings concerning a disciplinary matter shall be filed and conducted confidentially except that, without further order of the Court, the Clerk of the Court may notify other licensing jurisdictions of the imposition of any sanctions.